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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,378	03/17/2004	David T. Krick	111548-136408	3802
25943	7590	07/20/2006	EXAMINER	
SCHWABE, WILLIAMSON & WYATT, P.C. PACWEST CENTER, SUITE 1900 1211 SW FIFTH AVENUE PORTLAND, OR 97204			WILSON, GREGORY A	
			ART UNIT	PAPER NUMBER
			3749	

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/802,378  
Filing Date: March 17, 2004  
Appellant(s): KRICK ET AL.

**MAILED**

**JUL 10 2006**

**Group 3700**

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**Al Au Yueng  
For Appellant**

### **EXAMINER'S ANSWER**

This is in response to the appeal brief filed 12/30/05 appealing from the Office action mailed 3/2/05.

#### **(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

#### **(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

#### **(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

#### **(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

#### **(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

#### **(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

#### **(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-23, 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Hampel or Rapisarda et al. Hampel or Rapisarda et al. discloses the claimed invention except for the claimed parameters. It would have been obvious to one having ordinary skill in the art at the time the invention was made for the grate of Hampel or Rapisarda et al. to cover no more than 40% of the spanned area, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. It is noted that under section 103, not only are the teachings of the prior art taken into consideration, but also the level of ordinary skill in the pertinent art. *In re Luck*, 177 USPQ 523 (CCPA 1973). That is the say, it is not inventive to design the opening of the grate so that a particular size object will not fall through it.

**(10) Response to Argument**

With regard to claims 1-23, 25, and 26 the applicant argues that the prior art references fail to teach or suggest all elements of the independent claims. Claim 1 is chosen as the exemplary claim and is hereby analyzed. The applicant claims an air grate having one or more pieces or one or more materials, the references of Rapisarda

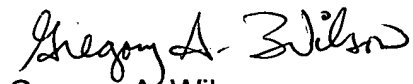
et al (6,612,084) in column 3, lines 45-62 and Hampel (2004/0163335) in paragraph [0045] disclose this limitation, "adapted to" partially cover no more than 40% of a spanned area, which is read on by both references since both references are capable of doing such. Both references allow air to flow through a plurality of openings, Rapisarda et al (Figure 1), Hampel (Figures 2 & 6) which can be designed to meet manufacturing requirement, in this case a semiconductor device manufacturing air flow requirement is not deemed as a patentable limitation; the openings being sufficiently small to meet a semiconductor device manufacturing fall through object size limitation would depend on the size of the object and not the applicants invention and likewise the materials adapted to meet a spill protection requirement is not deemed a patentable limitation since choosing a known material based on its intended use does not patentably distinguish over prior art. All that is necessary to meet the applicants claimed invention is an air grate of a one piece structure, made of one material including openings for flow of air, covering nothing, because "no more than 40 %" reads on 0% as well, and be capable of performing the functions indicated by the applicant. Limitations of being adapted to have a post installation raised height of about 0.5 inch and being adapted to cover the perimeter of the spanned area are all considered features that the prior art is capable of performing.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

  
Gregory A. Wilson

Primary Patent Examiner

AU 3749



**EHUD GARTENBERG  
SUPERVISORY PATENT EXAMINER**

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